
	<b>GAITHERSBURG POLICE DEPARTMENT</b>			
	<b>Body Worn Cameras</b>			
	<b>GENERAL ORDER</b>	<b>619.4</b>		<b>Related CALEA Standards:</b>
	<b>Effective Date</b>	<b>10/23/2017</b>		<b>41.3.8</b>
<b>Authorized by:</b>		<b>Mark P. Sroka</b> CHIEF OF POLICE	<b>SIGNATURE</b> <i>Mark Sroka</i>	<b>DATE</b> <b>10/23/2017</b>

## I. PURPOSE

The purpose of this policy is to provide officers with guidelines and instructions on when and how to use body-worn cameras (BWC) to record their contacts with the public. Additionally, this policy is intended to provide guidelines and procedures to manage BWC recordings.

## II. POLICY

It is the policy of this department to use the BWC system for the purpose of providing video and audio recording evidence of uniformed officers' interactions with the community while acting in the official capacity as a police officer. All BWC equipment and recordings are the property of the Gaithersburg Police Department.

The BWC program is designed only for uniformed officers, patrol related functions, and uniformed officers working a special event detail or uniformed secondary employment during criminal enforcement actions.

This policy does not govern the use of surreptitious recording devices used in covert operations or the in-car video camera system.

## III. DEFINITIONS

### A. **Body Worn Camera (BWC)**

Within the context of this directive, the term "Body Worn Camera" or "BWC" refers to a camera system worn on the person of a uniformed law enforcement officer, or an officer prominently displaying the officer's badge or other insignia, that is capable of recording video and intercepting oral communications.

**B. Official Purpose**

Within the context of this directive, the term “official purpose” refers to an action taken in direct connection with a law enforcement activity, prosecution of a criminal arrest, supervision of law enforcement personnel, an investigation of an officer’s actions due to an allegation of a violation of criminal statute or a violation of an administrative policy, and/or specific work performance.

**C. Administrative Inquiry**

Within the context of this directive, the term “administrative inquiry” refers to an investigation of a violation of any provision or policy in a written directive or General Order.

**IV. PROCEDURES**

**A. Legal Considerations**

Pursuant to Section 10-401 et. seq., Maryland Courts and Judicial Proceedings Code Annotated (“CJP Article”), otherwise known as the Maryland Wiretapping and Electronic Surveillance Act “State Wiretap Act” it is unlawful for any person to willfully intercept, attempt to intercept, disclose, attempt to disclose, use, or attempt to use any oral communications.

1. The State Wiretap Act, CJP Article §10-402(c)(11) provides that a law enforcement officer may lawfully, in the course of the officer’s regular duty, intercept an oral communication with a body-worn digital recording device, including a BWC, which is capable of recording video and oral communications if:
  - a. The law enforcement officer is in uniform or prominently displaying the officer’s badge or other insignia;
  - b. The law enforcement officer is making reasonable efforts to conform to Maryland Police Training Commission standards promulgated in accordance with Section 3-511 of the Maryland Public Safety Code Annotated for the use of body worn digital recording devices;
  - c. The law enforcement officer is a party to the oral communications;
  - d. The law enforcement officer notifies, as soon as practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and

- e. The oral communication is being made as part of a videotape or digital recording.
- 2. The State Wiretap Act, CJP Article §10-402(c)(2) also makes it lawful for a law enforcement officer in the course of the officer's regular duty to intercept an oral communication where the officer is party to the communication and where all parties to the communication have given prior consent to the recording.

**B. Operational Provisions**

- 1. Officers must complete department BWC training prior to using the system in the field.
  - a. The BWC training will include, but not be limited to:
    - i. Operation of the BWC;
    - ii. Operation and procedures associated with downloading, storage, and management of videos in Evidence.com;
    - iii. Review and proficiency with this directive; and
    - iv. Effective techniques to notify citizens of the recording, to include persons with special needs or limited English proficiency.
- 2. Function Testing – Prior to going in-service of each shift, officers shall perform a function test of the BWC system to ensure the BWC is operating properly.
  - a. Officers discovering a BWC malfunction shall immediately report the malfunction to a supervisor and not use that device in the field.
- 3. The BWC will be worn on the officer's body in a manner consistent with department training.
- 4. Officers will be required to use the BWC while working uniformed secondary employment. Any secondary employment use must be only for law enforcement related encounters and activities as authorized under this policy.
- 5. Officers will only wear the department issued BWC.

**C. Activation of the Body Worn Camera**

1. Officers shall only activate the BWC for legitimate operational law enforcement purposes.
2. The BWC shall be activated during all law enforcement related encounters and activities such as, but not limited to, the following incidents:
  - a. At the initiation of a call for service (moment of dispatch) or other activity that is investigative or enforcement in nature;
  - b. All enforcement and investigation related citizen contacts;
  - c. Documentation of evidence that can be used in the prosecution of criminal and traffic offenses;
  - d. Arrests and transports;
  - e. Traffic stops (prior to activating emergency lights);
  - f. Priority responses;
  - g. Vehicle and foot pursuits;
  - h. Suspicious situations or persons;
  - i. All searches (person, vehicle, structures, effects), except strip searches;
  - j. Interviews and interrogations;
  - k. Mental health interventions;
  - l. Any contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording; and/or
  - m. If the officer believes it is prudent to record the contact for official purposes.
3. Upon realizing a BWC recording is not activated when required by Department policy at the beginning of an event, the officer shall:
  - a. Immediately activate the camera:
  - b. Provide an audible explanation on the recording for why the video was not activated at the beginning of the incident;

- c. Notify the on-duty supervisor as soon as reasonable; and
  - d. Document the reason(s) for the delayed or no recording in the Incident Report; and
  - e. Email notification to the Police Systems Support Manager.
- 4. There may be instances in which officers are unable to activate his or her BWC due to circumstances making it unsafe or impractical to do so. In these exigent circumstances, officers shall begin the recording with the BWC at the first reasonable opportunity to do so and document the reason for the delayed start in the incident report and as part of the recording.
  - a. In this case, the officers will follow the notification and documentation procedures explained in Section IV. C. 3. a-e of this General Order.
- 5. Except otherwise exempt by law, officers will notify individuals that they are being recorded as soon as practical, unless it is unsafe, impractical, or impossible to do so.
  - a. This recording notice is satisfied even if another or additional individuals become party to the communication after the initial notice has been provided.
  - b. Examples of the recording notification language include:
    - i. “You are being audibly and visually recorded;” or
    - ii. “Our interaction is being recorded by my body camera.”
- 6. Once the BWC has been activated, officers will continue to record until:
  - a. The officer has left the scene and anticipates no further involvement in the event;
  - b. An on-duty supervisor has authorized that a recording may cease;
  - c. The officer is no longer engaged in a related investigation or enforcement activity; or
  - d. The event is concluded. An event will be deemed “concluded” when:
    - i. All arrests have been made and the arrestee(s) have been transported and released from the officer’s custody;

- ii. All witnesses and victims have been interviewed;
- iii. The continued recording will not serve to obtain additional evidence; and
- iv. No further law enforcement action is likely to occur.

**D. Deactivation of the Body Worn Camera**

1. Whenever the BWC equipment is deactivated for any purpose described in this section, the officer must record a brief verbal explanation for the deactivation prior to turning off the recording.
2. In situations when community members, witnesses, crime victims or other parties wish to share information related to criminal activity, but refuse to do so while being recorded, officers will have the discretion to turn off the BWC during the interview.
  - a. The preference is to record such statements; however, it is recognized that such persons may be hesitant to provide information while being recorded due to a fear of retaliation, privacy concerns or a feeling that the information is sensitive.
  - b. In such situations, the officer must record a brief verbal explanation for the deactivation prior to turning off the recording.
3. The BWC may be deactivated during conversations with officers or supervisors during information sharing sessions or discussing tactics and strategy.
4. Officers are required to obtain consent prior to recording an interview with a victim of a sex offense. The consent in these cases must be recorded on camera.

**E. Prohibited Use**

1. A BWC will not be used to create recordings in any location where there is a reasonable expectation of privacy, such as locker rooms, dressing rooms, and restrooms unless part of a criminal investigation or call for service.
2. A BWC will not be used to create recordings of strip searches.

3. A BWC will not be used to record employees during routine administrative activities, or supervisor/subordinate administrative interactions.
4. Officers will not intentionally record undercover officers or confidential informants without their consent.
5. Officers will not record non-work related personal activity.

**F. Reporting/Documentation**

1. Whenever a BWC recording is made of an event that results in a police report, the reporting officer must note in the report that the recording exists at the beginning of the narrative.
2. All BWC recordings must be uploaded by the officer at the end of his or her shift, unless an exception is authorized by a supervisor. The officer will be responsible for properly classifying the recording at the time of the upload.
3. In a critical incident (such as an officer involved shooting, in-custody death or other officer involved incident that results in a serious injury or death), a supervisor shall immediately take custody of the BWC and, in such case, will be responsible for the upload. The supervisor will treat the BWC and recordings as evidence and maintain a chain of custody.
4. The Police Systems Support Manager shall conduct regular usage audits to ensure officers are activating and using the BWC while performing official police duties.
  - a. The audit shall consist of comparing BWC usage data versus CAD history.
  - b. When discrepancies in BWC usage is discovered, the appropriate bureau commander shall be immediately notified for corrective action.

**G. Internal Access, Review, and Use of Recording**

1. A BWC recording may be reviewed by the recording officer for any work-related reason, including but not limited to:
  - a. To ensure the BWC system is working properly;
  - b. To assist with the writing of a report or other official document;

- c. To review/critique his or her own performance;
  - d. To review/prepare for court; or
  - e. To respond to a civil suit, criminal investigation (if the officer is the subject of the investigation), citizen complaint, or administrative complaint. The officer will have the ability to review the BWC recording of the referenced incident prior to making a statement.
2. BWC recordings may be reviewed by a Field Training Officer, investigator, supervisor, command staff member, or legal counsel for an official purpose to include:
- a. To review evidence of a crime;
  - b. In furtherance of an official investigation such as a personnel complaint, administrative inquiry, or a criminal or civil investigation;
  - c. To assess training value of a specific incident;
  - d. By legal counsel for any officer entitled to review his or her BWC recordings pursuant to Section G. 1. (e) of this General Order; or
  - e. By legal counsel and claims adjusters for the City in furtherance of a personnel investigation, action, civil complaint, or litigation.
3. To further the concept of active supervision at the scene of incidents, supervisors and command staff members shall not review a series of videos in an attempt to find a pattern of behavior that is not linked to a specific incident (for example, randomly reviewing a series of videos to find additional performance issues that occurred during one incident).
- a. When performance issues or violations of department policy are discovered, supervisors are encouraged to actively supervise the officer at the scene of future incidents to resolve performance issues rather than relying on BWC videos to monitor performance.
4. Officers are not authorized to view another officer's recording(s) except for an official purpose.
5. When an officer, supervisor, or command staff member reviews a BWC video, he or she shall document the purpose of the review in the "Notes" section of the video log.



- a. The Chief of Police may authorize an exemption to this provision for the purpose of maintaining the integrity of an active Internal Affairs investigation.
6. When a recorded incident or recording of an incident is used to question an officer that is the subject of an internal investigation, access to all BWC recordings related to the incident shall be provided to that officer in advance of the questioning.
7. A supervisor shall review and ensure the proper classification of the BWC recording of an incident when:
  - a. An officer is involved in a reportable response to resistance/aggression incident;
  - b. An officer is injured during the performance of his or her duties;
  - c. An officer actively participates in a vehicular pursuit or foot pursuit; or
  - d. Investigating a complaint against an officer.
8. BWC recordings shall not be routinely reviewed for the express purpose of discovering acts of misconduct or instances of poor performance without specific justification.
  - a. An officer's supervisor may use BWC recordings to address performance when justification exists.
  - b. Any recording used must be reviewed with the subject officer prior to any documentation of performance.
  - c. A supervisor must give written notice to an officer of his or her intent to use a BWC recording as part of an officer's evaluation via Intent to Use BWC Recording Form (GPD 619.4(A)).
9. BWC recordings may be used as a basis for discipline.
  - a. The officer under investigation shall be provided written notice of the department's intent to use BWC recording(s) as part of the internal investigation via Intent to Use BWC Recording Form (GPD 619.4(A)). This written notice shall be provided at the time the officer is served with the Internal Investigation Notification.
  - b. The officer under investigation will be afforded the opportunity to review the BWC recording(s) related to the incident being

investigated administratively with his or her selected representative prior to the interrogation.

10. BWC recordings may be used for training purposes.
  - a. Officers will be provided written notice of the intent to use BWC recording(s) for training purposes prior to the training via Intent to Use BWC Recording Form (GPD 619.4(A)).
  - b. An officer may object, in writing, no later than five (5) business days after notifications to the use of the BWC recording. When an officer files a written objection to the BWC recording(s) use in training, the Chief of Police will weigh whether the training value outweighs the officer's objection and decide whether the recording will be used.
11. An audit trail shall be maintained to record access to all recordings and officers shall have timely and ongoing access to the log, which will include:
  - a. Name of the employee accessing the recording;
  - b. Reason for access;
  - c. Date the recording was accessed;
  - d. Length of time the recording was reviewed; and
  - e. Whether the recording was copied or edited.
12. A BWC recording of a constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in criminal activity or in need of assistance.
13. Stored video and audio from the BWC recordings may not:
  - a. Be used to create a database or pool of mug shots;
  - b. Be used as fillers on photo arrays; or
  - c. Be searched using facial or voice recognition software. This does not prohibit the use of recognition software to analyze the recording of a particular incident when the appropriate bureau commander has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording.

14. Employees shall not access, obtain, attempt to obtain, or copy/convert for his or her personal use any recording produced by a BWC.
  - a. Employees shall not make recordings (video or photo) of a computer monitor that is playing a BWC recording.
  - b. Employees shall not upload BWC recordings to public and/or social media websites.
15. Officers may share his or her video with the primary investigating GPD officer.
16. Except as authorized by policy, employees shall not attempt to copy, alter, release, reuse, modify, or tamper with BWC recordings in any manner. Employees are prohibited from making a copy of a BWC audio/video recording by using another recording device, such as a cell phone.
17. Violations of a component of this General Order are subject to disciplinary provisions listed in General Order 208.2 Disposition Matrix and 208.2(a) Violation Matrix Appendix.

#### **H. Classification & Retention of Data**

1. All original BWC recordings are the property of the Gaithersburg Police Department and shall be securely stored and retained according to the department's BWC Retention Schedule and consistent with state law and existing evidence protocols, unless a specific request is made to store them for a longer period and authorized by the Chief of Police.
2. BWC recordings that can be used in an investigation or captures a confrontational encounter between an officer and a member of the public will be deemed "evidentiary" and categorized according to the classification of the incident. Recordings that do not contain evidence or capture routine, non-confrontational encounters will be deemed "non-evidentiary" and remain unclassified.
3. If a recording captures evidence of a crime, an incident that results in a complaint against a police officer, part of an internal affairs investigation, civil litigation, an officer's response to resistance/aggression, a foot or vehicle pursuit, an unintended or prohibited activation of a BWC, training or performance issues, or any other incident which requires the recording to be stored for a longer retention period; it shall be the responsibility of the officer and the officer's supervisor to properly classify the video with one of the following classifications:
  - a. Critical Incidents;

- b. Evidence;
  - c. Complaint;
  - d. Civil Litigation
  - e. Unintended/Prohibited Activation;
  - f. Response to Resistance/Aggression;
  - g. Training Issue;
  - h. Performance Issue; or
  - i. Training
4. Non-evidentiary recordings will be destroyed after 366 days, unless the department deems it necessary to retain the recording for a longer period of time.
  5. If an officer inadvertently activates a BWC recording which records a situation of no official purpose and captures a situation of a higher expectation of privacy, the officer shall notify his or her supervisor promptly via an Unintended/Prohibited Recording Notification (GPD 619.4(B)).
    - a. Recordings deemed by the Department to be recorded inadvertently and which have no legitimate purpose to the Department, shall be destroyed expeditiously by the Administrative Bureau Commander and document accordingly in the BWC Recording Deletion Log. .

**I. Records Requests and Release of Recordings**

1. Public requests for a release of BWC recordings will be conducted in accordance with Maryland Public Information Act (MPIA), Section 4-101 et seq., Maryland General Provisions Code Annotated.
2. Non-MPIA related release of BWC videos will only be permitted with authorization of the Chief of Police, after consultation with the primary investigator(s) and the State's Attorney's Office who are responsible for investigating the incident related to the BWC recording.

3. When a BWC recording is released to the public (MPIA and non-MPIA related release of BWC recordings), the officers shown in the recording and agencies depicted in the BWC recording will be notified.
4. BWC recordings will be made available to the Montgomery County State's Attorney's Office for prosecutorial and discovery purposes.
5. BWC recordings may be shared with allied law enforcement agencies for official purposes only, with the approval of the Administrative Bureau Commander.